

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/24/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000463

FILED: _____

STATE OF ARIZONA

SAMUEL K LESLEY

v.

RICHARD W TRIBBLE

ROBERT ARENTZ

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 8947006-1C

Charge: SOLICITATION OF PROSTITUTION

DOB: 10/19/48

DOC: 07/19/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of Oral Argument on April 3, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court

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Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, the Memoranda and argument of counsel.

The only issue raised by Appellant concerns the alleged failure of the State to timely disclose a complete tape recording of Appellant's conversation with Officer Beverly Freund which formed the basis of the charge of Solicitation of Prostitution. Appellant's trial attorney contended that the tape recording containing the conversation between Appellant and Officer Freund that he was provided was not complete, and did not contain conversations at the beginning and end of the tape recording which the State sought to have admitted at trial.¹ However, counsel for Appellant did not have his copy of the tape recording at hand and made his statements to the court without benefit of reviewing the actual tape that was disclosed by the State.² The prosecutor reminded the court and counsel that there was a pause after the "transcribed portion" that was clearly disclosed to Appellant.³ The prosecutor also pointed out that Appellant's counsel's copy of the tape was made from his copy.⁴ The prosecutor suggested to the trial judge to give the defense time to fully review the tape. The trial court asked Appellant's trial attorney if he wished to continue with cross-examination and he agreed to do so. The trial judge denied the prosecutor's motion to admit the tape "subject to further ruling of the court."⁵ At the conclusion of Officer Freund's testimony, the trial judge invited counsel to "make a clear statement as to the basis of the objection (to admission of the tape recording)".⁶ The prosecutor again requested an opportunity for Appellant's trial attorney to check the tape recording supplied to him by the State.⁷ Appellant's trial attorney stated, "I'm

¹ See R.T. of June 1, 2001 at pages 27-28.

² Id. at page 28.

³ Id.

⁴ Id.

⁵ Id. at page 29.

⁶ Id. at page 37.

⁷ Id. at pages 37-38.

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going to attempt to have it (the tape recording) brought to me over the lunch hour."⁸

Contrary to the assertions of counsel for Appellant, the record does not support Appellant's contentions that the full and complete tape recording was never disclosed to him because the record does not contain the results of the search and review by the trial attorneys of the actual tape recording that was disclosed to Appellant's trial counsel. The record does disclose that after the lunch hour the trial judge reconvened court and then admitted the tape recording as exhibit #3 without objections or a request for an additional record by trial counsel for Appellant. Therefore, contrary to the assertions of Appellant's counsel, the trial record does not disclose an unequivocal violation of Rule 15, Arizona Rules of Criminal Procedure. The record does disclose a concern that a Rule 15 violation may have occurred, with directions from the court for both counsel to investigate it over the noon hour. Then after the noon hour has expired the trial judge admitted the disputed tape recording without further objection.

THIS COURT FINDS no error.

IT IS ORDERED affirming the judgment of guilt and sentence imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all future and further proceedings.

⁸ Id. at page 40.
Docket Code 512